

ORDINANCE NO. 08- 327

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS AMENDING CHAPTER 10.12 OF THE LOS ALTOS MUNICIPAL CODE PERTAINING TO THE SEWER SERVICE CHARGE; ESTABLISHING THE RATE OF THE SEWER SERVICE CHARGE FOR FISCAL YEAR 2008-09 AND SUBSEQUENT FISCAL YEARS; AND SETTING FORTH THE URGENCY THEREFORE.

WHEREAS, pursuant to Chapter 10.12 of the Los Altos Municipal Code, the City of Los Altos imposes a Sewer Service Charge upon parcels connected to the sewer system; and

WHEREAS, the purpose of the Sewer Service Charge is to fund costs associated with providing sewer service; and

WHEREAS, the City engaged Harris & Associates (the "Rate Consultant") to prepare a rate study recommending a revision to the Sewer Service Charge that would fairly and equitably spread the costs of sewer system operation across parcels using sewer service and would meet the requirements of California law; and

WHEREAS, the Rate Consultant has prepared a rate study entitled "Rate Analysis Report for the City of Los Altos Sewer Service Charge" dated June 19, 2008 (the "Study") which is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by reference; and

WHEREAS, the Study proposed new rates for the Sewer Service Charge, including an automatic inflationary rate adjustment formula for those rates (collectively, the "Rate Structure"); and

WHEREAS, the City caused notice of (i) the Rate Structure and (ii) a public hearing on the Rate Structure to be mailed to the record owner of each parcel subject to the Sewer Service Charge; and

WHEREAS, such notice was given pursuant to (and included all information required by) Section 6 of Article XIID of the California Constitution (the "Proposition 218 Fee Provisions"), the Proposition 218 Omnibus Implementation Act (Section 53750 *et seq.* of the California Government Code) (the "Act"), and applicable law; and

WHEREAS, as stated in the notice, on July 22, 2008, at 7:00 PM, in the City Council Chambers located at One North San Antonio Road, Los Altos, California, 94022, the City Council held a full and fair public hearing (the "Hearing") at which it heard all oral and written testimony with respect to the Rate Structure and considered all protests against the Rate Structure; and

WHEREAS, the City Council determines that written protests against the Rate Structure have not been presented by the owners of a majority of the parcels subject to the Sewer Service Charge; and

WHEREAS, the City Council desires to implement the Sewer Service Charge consistent with the recommendation of the Study; and

WHEREAS, the City Council desires to continue collecting the Sewer Service Charge on the Santa Clara County property tax roll; and

WHEREAS, there is an urgency requiring that this Ordinance take immediate effect.

The City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AFFIRMATION OF RECITALS. Each of the recitals set forth above is true and correct in all respects.

SECTION 2. APPROVAL OF RATE STUDY. The Study is hereby approved by the City Council in the form on file in the Office of the City Clerk and available for public inspection.

SECTION 3. REPEAL OF CODE PROVISIONS. Articles 3, 4, 5, 6, 7, 8 and 9 of Chapter 10.12 of the Municipal Code are hereby repealed in their entirety.

SECTION 4. AMENDMENT OF CODE. A new Article 3 is added to Chapter 10.12 of the Municipal Code to read as follows:

“ARTICLE 3. SEWER SERVICE CHARGES

- 10.12.090 Short Title
- 10.12.100 Authority
- 10.12.110 Definitions
- 10.12.120 Sewer Service Charge Imposed
- 10.12.130 Rate
- 10.12.140 Estimation of Sewer Use
- 10.12.150 Election to Collect on Tax Roll
- 10.12.160 Preparation of Report
- 10.12.170 Consideration of Report and Approval of Charges
- 10.12.180 Effect of Approval and Filing of Charges
- 10.12.190 Compensation of County
- 10.12.200 Alternative Collection Method
- 10.12.220 Use of Proceeds
- 10.12.230 Rate Limitation

10.12.090 Short Title

This article may be cited as the “City of Los Altos Sewer Service Charge Ordinance.”

10.12.100 Authority

This article is adopted pursuant to Article 4 of Chapter 6 of Part 3 of Division 5 of the California Health & Safety Code (Section 5470 *et seq.*) and Section 7 of Article XI of the California Constitution.

10.12.110 Definitions

Unless the context otherwise indicates, the terms used in this article shall have the following meanings:

- A. “Actual water consumption,” with respect to a parcel, shall mean the water consumption indicated for that parcel on the records of the California Water Company (or its successor) or such other water utility as serves the parcel.
- B. “Appeals administrator” shall mean the city manager or his or her designee.
- C. “City” shall mean the City of Los Altos.

D. "County" shall mean the County of Santa Clara.

E. "Parcel that is connected to the sewer system" shall mean a parcel that is either (i) located in the city and connected to the city's sewer system, (ii) located in the city and connected to the City of Mountain View's sewer system by arrangement between the city and the City of Mountain View, or (iii) located in an unincorporated area of the county (or a portion of the county that was unincorporated as of July 1, 2008) and connected to the city's sewer system.

F. "Sewer service charge" shall mean the charge imposed pursuant to Section 10.12.120 of this article.

G. "Wet season months" shall mean, with respect to a specific fiscal year, the three monthly billing periods during the entire calendar year in which that fiscal year begins, for which the records of the California Water Company (or its successor) indicate the lowest total water consumption during that calendar year by parcels connected to the city's sewer system that are served by the California Water Company (or its successor).

10.12.120 Sewer Service Charge Imposed.

There is imposed upon each parcel connected to the sewer system an annual sewer service charge.

10.12.130 Rate

The rate of the sewer service charge shall be stated as a rate per unit of estimated sewer use, and shall be established by ordinance adopted by the city council pursuant to Section 5471(a) of the California Health & Safety Code.

10.12.140 Estimation of Sewer Use

The sewer use of a parcel upon which the sewer service charge for that parcel shall be calculated for a fiscal year shall be estimated using, by multiplying by 12, the average actual water consumption for that parcel of the three wet season months for the prior fiscal year. One unit of sewer use shall be assigned for each 100 cubic feet of water use.

Where actual monthly water consumption data is not available for a parcel (as when the parcel is recently connected to a water system), sewer use shall be estimated as the average estimated sewer use for the prior fiscal year of all parcels in the same land use. For purposes of this section, land use classes shall be:

- Single Family Home
- Condominium Unit
- Multi-Family Residence (2 dwelling units)
- Multi-Family Residence (3-4 du's)
- Multi-Family Residence (5+ du's)
- Church
- Commercial / Industrial
- Institutional
- Park
- School
- Government

10.12.150 Election to Collect on Tax Roll

The city continues its election to have the sewer charges for each forthcoming fiscal year collected on the Santa Clara County tax roll in the same manner as, by the same persons as, and at the same time as, together with and not separately from, the city's general tax.

10.12.160 Preparation of Report

The engineering services manager shall annually cause to be prepared and filed with the City Clerk the report described in Section 5473 of the California Health and Safety Code.

10.12.170 Consideration of Report and Approval of Charges

The city council shall consider said report at a public hearing noticed and conducted pursuant to Sections 5473.1 through 5473.2 of the California Health and Safety Code, following which hearing it may take action on the report, pursuant to Section 5473.3 of that Code and may direct that the city clerk file the report and the charges contained therein with the Santa Clara County Auditor pursuant to Section 5473.4 of that Code.

10.12.180 Effect of Approval and Filing of Charges

Upon the approval and filing of charges, such charges shall be subject to the provisions of Section 5473.5 through 5473.9 of the California Health and Safety Code, and other applicable law.

10.12.190 Compensation of County

The county shall be compensated for services rendered in connection with the levy, collection, and enforcement of sewer service charges for the city in accordance with the usual practices of the county or in accordance with an agreement between the City and the county for the collection of general taxes for the city.

10.12.200 Alternative Collection Method

In the event the city can not, or does not, complete action pursuant to sections 10.12.160 through 10.12.170 of this code to collect the sewer service charge against a parcel for a fiscal year, the city may collect such sewer service charge for that year with respect to that parcel by mailing a bill to the owner of the parcel. Any charge billed in this manner shall be due and payable upon presentation, but no earlier than December 1 of the fiscal year for which the charge is imposed. If a charge billed in this manner is not paid within 30 days of the due date, then on the first day of each calendar month thereafter a late fee of two percent of the amount of the delinquent sewer service charge shall be added and become due. If any such charge remains outstanding at the time the report is prepared for a subsequent fiscal year pursuant to section 10.12.160, the delinquent charge (and accrued late fees) may be included on such report and collected on the tax roll along with the charges for that fiscal year.

10.12.210 Appeal of Sewer Use Estimation

In the event the owner of a parcel subject to the sewer service charge believes that the estimation of sewer use calculated by the city pursuant to Section 10.12.140 for that parcel for a fiscal year does not accurately reflect the amount of effluent introduced

into the sewer system via the parcel's connection to the sewer system, then the owner may file a written appeal of the determination (and the sewer service charge against the parcel) with the appeals administrator. Such written appeal must be filed before December 1 of the fiscal year and must include evidence that (i) due to the unique or unusual nature of water use on the parcel, the estimation method substantially overestimates the sewer usage of the parcel relative to other parcels with similar actual sewer use, and (ii) use of the standard estimation method is manifestly unfair under the circumstances. If the appeals administrator determines that each of the previous-stated criteria is true, based on the written appeal and on other evidence available to him or her, then he or she shall reduce the sewer service charge for that parcel for that fiscal year to the amount he or she determines to reflect an accurate estimate of sewer use and shall either transmit a correct charge to the county or issue a refund in the amount of the reduction. The appeals administrator's determination shall be final.

10.12.220 Use of Proceeds

Sewer service charge proceeds shall be used only for the acquisition, construction or reconstruction, maintenance and operation of sanitation or sewerage facilities of the city and to repay principal and interest on bonds issued for the construction of such sanitary or sewerage facilities and to repay federal, state, county or other loans or advances made to the city for the construction or reconstruction of sanitary or sewerage facilities; provided, however, that such revenue shall not be used for the acquisition or construction of new local street sewers or laterals, as distinguished from main trunk, interceptor and outfall sewers.

10.12.230 Rate Limitation

For Fiscal Year 2008-09, the rate of the sewer service charge shall not exceed \$3.03 per unit of estimated sewer use. If the city council, pursuant to Section 10.12.130 of this article, revises the sewer service charge for any subsequent fiscal year to be higher than \$3.03, the revised rate shall not exceed the rate calculated by multiplying \$3.03 by the proportional change in the Consumer Price Index for All Urban Consumers for the San Francisco Bay Area between January 2008 and the January preceding the first fiscal year for which the rate is being revised."

SECTION 5. AMENDMENT OF CODE: A new Article 4 is added to Chapter 10.12 of the Municipal Code to read as follows:

"ARTICLE 4. MANDATORY SEWER SERVICE

10.12.240 Connections Mandatory

10.12.250 Disconnections

10.12.260 Abatement

10.12.240 Connections Mandatory.

The maintenance or use of cesspools or other local means of sewage disposal constitute a public nuisance. All buildings inhabited or used by human beings shall be connected with the sewerage system of the city within ninety (90) days from the time when such connection can be made, if the building to be served is within one hundred (100) feet of the system.

10.12.250 Disconnections.

Premises as to which charges have become delinquent shall be disconnected. The person in charge of the sewer system shall estimate the cost of disconnection of such premises from the enterprise and the cost of reconnecting it thereto, and such user shall deposit the cost as estimated of disconnection and reconnection before such premises are reconnected to the sewer system. The amount of the cost of disconnection and reconnection over the deposit shall constitute a charge and be collected as such. The amount of the deposit not used shall be repaid or applied as a deposit.

10.12.260 Abatement.

During the period of non-connection or disconnection, habitation of such premises by human beings shall constitute a public nuisance, whereupon the council shall cause proceedings to be brought for the abatement of the occupancy of said premises by the human beings. In such event, a reasonable attorney's fee shall become due as a penalty for nonpayment."

SECTION 6. INITIAL RATE. The rate of the Sewer Service Charge imposed by Section 10.12.120 of the Municipal Code for Fiscal Year 2008-09 and each subsequent fiscal year is hereby established as \$3.03 per unit of estimated sewer use.

SECTION 7. RATE ADJUSTMENTS. The Sewer Service Charge rate adjustment formula set forth in Section 10.12.230 of the Municipal Code was approved by the City Council following a public hearing that was noticed and conducted pursuant to the Proposition 218 Fee Provisions and the Act. Consequently, so long as a revised rate established in the future by the City Council does not exceed the limit set forth in Section 10.12.230, such revision shall not constitute an "increase" of the sewer service charge rate for purposes of the Proposition 218 Fee Provisions or the Act. Such rate revisions shall not, therefore, require additional compliance with the procedural requirements of the Proposition 218 Fee Provisions or of the Act.

SECTION 8. NO REPEAL OF ORDINANCE NO. 00-393. It is not the intention of the City Council that this Ordinance repeal or in any way affect the operation of Ordinance No. 00-393 of the City Council or of the Sewer Capacity Acquisition Charge imposed by that Ordinance.

SECTION 9. ARTICLE 4 DECLARATORY OF EXISTING LAW. Article 4 of Chapter 10.12 of the Municipal Code (added by this Ordinance) represents a recodification of former Article 7 of Chapter 10.12 (which was repealed by this Ordinance), and is declaratory of existing law.

SECTION 10. PRIOR SEWER SERVICE CHARGES. Notwithstanding the provisions of this Ordinance, sewer service charges levied for fiscal years prior to Fiscal Year 2008-09 shall remain governed by the provisions of Chapter 10.12 of the Municipal Code as they existed prior to the adoption of this Ordinance.

SECTION 11. FINDINGS. The City Council, based upon the Study and upon such other testimony provided to it at the Hearing finds as follows:

- (a) Revenues derived from the Sewer Service Charge, as imposed pursuant to this Ordinance, will not exceed the funds required to provide sewer service to the parcels subject to the Sewer Service Charge.
- (b) Revenues derived from the Sewer Service Charge can not, pursuant to Section 10.12.220 of the Municipal Code, be used for any purpose other than that for which the Sewer Service Charge is imposed.
- (c) The amount of the Sewer Service Charge upon each parcel does not exceed the proportional cost of sewer service attributable to that parcel.
- (d) The Sewer Service Charge is only imposed upon parcels that are actually connected to a sewer system, and which therefore either use, or have immediate ability to use, sewer services.
- (e) Sewer service is not a general governmental service as that term is used in subdivision (b)(5) of the Proposition 218 Fee Provisions.

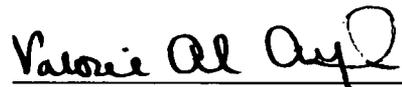
SECTION 12. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 13. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 14. IMMEDIATE EFFECTIVENESS AND DECLARATION OF FACTS CONSTITUTING URGENCY. Pursuant to Section 36937 of the California Government Code, this Ordinance shall take effect immediately because its passage is required for the immediate preservation of the public peace, health and safety. The facts constituting this urgency are that: (i) the revenues generated by the Sewer Service Charge are needed to pay the usual and current expenses of the City's sewer enterprise and to ensure the provision of sewer services, (ii) in order to ensure that the ratepayers of the City's sewer enterprise pay the full cost of providing services to such customers, it is necessary that this ordinance be effective immediately, and (iii) in order to ensure proper calculation of the rate schedule for the Sewer Service Charge (and avoid potentially setting a rate that either would not generate sufficient revenues or would result in an overcharge to ratepayers), the City was unable to adopt the Sewer Service Charge revisions at some earlier meeting.

The foregoing ordinance was passed and adopted at a meeting of the City Council of the City of Los Altos on July 22, 2008 by the following vote:

Ayes: PACKARD, SATTERLEE, CASAS, BECKER, CARPENTER
Noes: NONE
Absent: NONE



Valorie Cook Carpenter, MAYOR

Attest:



Susan Kitchens, CITY CLERK

Date: July 22, 2008